

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BOARD OF TRUSTEES OF THE
LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY HEALTH
AND SECURITY FUND et al.,

CASE NO. 2:21-cv-01313-LK

ORDER DENYING MOTION FOR
DEFAULT JUDGMENT

Plaintiffs,

V.

RG CONSTRUCTION, INC.,

Defendant.

This matter comes before the Court on Plaintiffs' Motion for Default Judgment, Dkt. No. [REDACTED]

14. They seek to recover unpaid employee benefit contributions from an employer who has not appeared or defended in this action. The Court denies the motion for the reasons set forth below.

I. BACKGROUND

Plaintiffs Boards of Trustees of the Locals 302 and 612 of the International Union of Operating Engineers Construction Industry Health and Security Fund, Locals 302 and 612 of the

1 International Union of Operating Engineers-Employers Construction Industry Retirement Fund,
 2 and Western Washington Operating Engineers-Employers Training Trust Fund (collectively, “the
 3 Trust Funds”) are joint labor-management funds created pursuant to Section 302(c) of the Labor
 4 Management Relations Act, 29 U.S.C. § 186(c) (“LMRA”), and the Employee Retirement Income
 5 Security Act, 29 U.S.C. § 1001, *et seq.* (“ERISA”). Dkt. No. 1 at 2. The Trust Funds provide
 6 employee benefits including medical, dental, pension, apprenticeship, and training benefits to
 7 eligible employees covered by a collective bargaining agreement (“CBA”). Dkt. No. 15 at 2–3.

8 Defendant RG Construction, Inc. is a Washington corporation doing business in
 9 Washington. Dkt. No. 1 at 2. RG Construction is a signatory to the CBA, which incorporates by
 10 reference the trust agreements for the Trust Funds. *Id.* at 2–3. The trust agreements include a Health
 11 and Security Trust agreement, Dkt. No. 15 at 78–138, a Retirement Trust agreement, *id.* at 140–
 12 97, and a Training Trust agreement, *id.* at 199–221.

13 The CBA and trust agreements require RG Construction to make employee benefit
 14 contributions to the Trust Funds on behalf of RG Construction’s employees working within with
 15 the jurisdiction of the CBA. Dkt. No. 1 at 3. RG Construction has employed workers for whom
 16 employee benefit contributions were due pursuant to the terms of the CBA and trust agreements.
 17 *Id.* The complaint alleges that RG Construction failed to make timely and full employee benefit
 18 contributions to the Trust Funds for October through December 2019, and that it owes the Trust
 19 Funds \$14,374.85 in contributions for that time. *Id.* According to the Trust Funds, RG Construction
 20 also failed to make timely and full employee benefit contributions to the Trust Funds for March
 21 2021 through “the present.” *Id.* The complaint further alleges that under the terms of the trust
 22 agreements and CBA, and under federal statutory law, RG Construction is obligated to pay
 23 liquidated damages, interest, reasonable attorney’s fees, and costs and expenses of suit. *Id.* Based
 24 on those allegations and the delinquent contributions, the Trust Funds bring a claim for violations

1 of ERISA, 29 U.S.C. §§ 1132, 1145. *Id.* at 2–4.

2 After RG Construction failed to appear, the Trust Funds moved for default, and the Clerk
 3 of the Court entered default on March 1, 2022. Dkt. Nos. 10, 12. The Trust Funds filed this motion
 4 for default judgment on April 28, 2022. Dkt. No. 14. However, the Trust Funds failed to show that
 5 they had properly served RG Construction, so the Court vacated the previously entered default.
 6 Dkt. No. 17 (citing Fed. R. Civ. P. 4; Wash. Rev. Code § 23.95.450(4)). The Trust Funds then
 7 moved for default again, providing additional evidence to show that they served RG Construction.
 8 Dkt. Nos. 18, 19. Based on the additional information and other evidence in the record, the Clerk
 9 of the Court entered default against RG Construction on July 28, 2022. Dkt. No. 20.

10 The Trust Funds then moved for reconsideration of their previously denied motion for
 11 default judgment. Dkt. No. 21. Because the Trust Funds did not show manifest error in the prior
 12 ruling, Dkt. No. 17, or new facts or legal authority that could not have been brought to the Court’s
 13 attention earlier, the Court declined to reconsider its order. Dkt. No. 22 (citing LCR 7(h)).
 14 Nevertheless, the Court determined that it would exercise its discretion and consider the original
 15 motion for default judgment and the updated declaration (Dkt. Nos. 14–16, 19) in the interest of
 16 efficiency. Dkt. No. 22.

17 **II. DISCUSSION**

18 **A. Subject Matter and Personal Jurisdiction**

19 The Court has subject matter jurisdiction over the Trust Funds’ claims pursuant to Sections
 20 502 and 515 of ERISA. 29 U.S.C. § 1132(e)(1) (“Except for actions under subsection (a)(1)(B) of
 21 this section, the district courts of the United States shall have exclusive jurisdiction of civil actions
 22 under this subchapter brought by the Secretary or by a participant, beneficiary, fiduciary, or any
 23 person referred to in section 1021(f)(1) of this title.”); *id.* § 1145 (“Every employer who is
 24 obligated to make contributions to a multiemployer plan under the terms of the plan or under the

1 terms of a collectively bargained agreement shall, to the extent not inconsistent with law, make
 2 such contributions in accordance with the terms and conditions of such plan or such agreement.”);
 3 *Trs. of the Screen Actors Guild-Producers Pension & Health Plans v. NYCA, Inc.*, 572 F.3d 771,
 4 776 (9th Cir. 2009) (explaining that Section 1145 provides a federal cause of action to enforce pre-
 5 existing obligations created by collective bargaining agreements). Trust funds, including the
 6 Plaintiffs in this case, can bring claims as fiduciaries under sections 1132 and 1145. *See, e.g.*,
 7 *Locals 302 & 612 of the Int'l Union of Operating Eng'rs Constr. Indus. Health & Sec. Fund v.*
 8 *Barry Civil Constr., Inc.*, No. C16-0404-JPD, 2016 WL 4528462, at *5–6 (W.D. Wash. Aug. 29,
 9 2016) (granting the Trust Funds’ motion for summary judgment on an ERISA claim for unpaid
 10 contributions); *Operating Eng'rs Health & Welfare Tr. Fund for N. Cal. v. Adam Moreno & Sons,*
 11 *Inc.*, No. 20-cv-09155-TSH, 2021 WL 8153587, at *7 (N.D. Cal. July 8, 2021), *report and*
 12 *recommendation adopted*, 2021 WL 8153573 (N.D. Cal. Aug. 16, 2021).

13 The Court also has personal jurisdiction over RG Construction. Personal jurisdiction over
 14 a defendant may be acquired by personal service on that defendant, *Cripps v. Life Ins. Co. of N.*
 15 *Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992), so service on RG Construction was sufficient to establish
 16 personal jurisdiction over it. Dkt. No. 19 at 1–2.

17 **B. Legal Standard**

18 Motions for default judgment are governed by Rule 55 of the Federal Rules of Civil
 19 Procedure. The Rule authorizes the Court to enter default judgment against a party that fails to
 20 appear or otherwise defend in an action. The court has discretion to grant or deny a motion for
 21 default judgment. *Hawaii Carpenters' Tr. Funds v. Stone*, 794 F.2d 508, 511–12 (9th Cir. 1986).
 22 Default judgments are ordinarily disfavored, and cases should be decided on their merits if
 23 reasonably possible. *Eitel v. McCool*, 782 F.2d 1470, 1472 (9th Cir. 1986). Courts may consider
 24 the following factors (the “*Eitel* factors”) in deciding whether to grant a motion for default

1 judgment:

2 (1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's
 3 substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at
 4 stake in the action[,] (5) the possibility of a dispute concerning material facts[,]
 5 (6) whether the default was due to excusable neglect, and (7) the strong policy
 6 underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

7 *Id.* at 1471–72.

8 On default, “the factual allegations of the complaint, except those relating to the amount of
 9 damages, will be taken as true.” *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir.
 10 1987) (quoting *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977)). However, the
 11 plaintiff must establish the relief to which it is entitled. *Fair Hous. of Marin v. Combs*, 285 F.3d
 12 899, 906 (9th Cir. 2002). Accordingly, “necessary facts not contained in the pleadings, and the
 13 claims which are legally insufficient, are not established by default.” *Cripps v. Life Ins. Co. of N.*
 14 *Am.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

13 C. The Trust Funds Are Entitled to a Default Judgment

14 After weighing all of the *Eitel* factors, the court finds that the second, third, fourth, fifth,
 15 and seventh factors weigh against default judgment. Although the first and sixth factors favor
 16 default judgment, on balance, the factors do not support default judgment against RG Construction
 17 at this time.

18 1. Factors Weighing Against Default Judgment

19 The second, third, fourth, fifth, and seventh *Eitel* factors weigh against default judgment
 20 here.

21 There are unexplained inconsistencies between RG Construction's remittance reports and
 22 the calculations from the Trust Funds. For example, RG Construction's remittance reports do not
 23 match the Trust Fund's summary of amounts due in October 2019 and December 2019. *Compare*
 24 Dkt. No. 15 at 58, 60, with *id.* at 72–73. There are handwritten notes on Defendant's remittance

1 reports that may explain the differences. *See, e.g., id.* at 58 (“Correct GR wage total – PK”).
 2 However, the Trust Funds do not make any attempt to explain the differences or show their work
 3 in arriving at different amounts than RG Construction. Although the handwritten notes are at times
 4 initialed “PK,” indicating they may have been written by Ploy Kepner, Mr. Kepner’s declaration
 5 does not address them. Indeed, his declaration contains some inconsistencies with the handwritten
 6 notes and the Trust Funds’ summary. *Compare, e.g., id.* at 3 (stating that “[f]or October through
 7 December 2019, RG Construction failed to make timely payment of its contributions,” but
 8 mentioning nothing about incorrect calculations), *with id.* at 58, 60 (notes on remittance reports
 9 from October and December 2019 stating, “calculation errors based on hrs reported” and “totaled
 10 947.50”) *and id.* at 73 (seeking to collect sums, including interest and liquidated damages, based
 11 not only on late payments but also—apparently—miscalculated contribution amounts).¹ The Court
 12 declines to describe every shortcoming in the Trust Funds’ submissions. The discrepancies among
 13 the remittance reports, Mr. Kepner’s declaration, and the Trust Funds’ summary suggest potential
 14 disputes over material facts, weighing against default judgment on *Eitel* factor five.

15 “These inconsistencies also cast doubt over the merits and sufficiency of the complaint, the
 16 sum of money at stake, and the validity of default judgment in this case when courts generally
 17 favor deciding cases on their merits—*Eitel* factors two, three, four, and seven.” *Boards of Trustees*
 18 *of Locs. 302 & 612 of Int'l Union of Operating Engineers Constr. Indus. Health & Sec. Fund v.*
 19 *Donkey Hoof LLC*, No. 2:22-CV-00731-JHC, 2022 WL 17716443, at *2 (W.D. Wash. Dec. 15,
 20 2022). As explained above, the Trust Funds are required to prove all damages sought in the

21
 22 ¹ The Court also notes that Mr. Kepner avers that his declaration is based on his personal knowledge, the declaration
 23 states that the summary of amounts due and owing—a crucial document—was “prepared by collection counsel,” and
 24 does not indicate that Mr. Kepner reviewed and verified the amounts and calculations himself. *Id.* at 2, 4. And again,
 neither Mr. Kepner’s declaration nor the summary explain the differences between the summary and the remittance
 reports or show the Trust Funds’ work on the calculations in a manner sufficient to satisfy Local Civil Rule 55.

1 complaint, and the court must ensure that the amount of damages is reasonable and demonstrated
 2 by the evidence. Fed. R. Civ. P. 55(b); Fed. R. Civ. P. 8(b)(6); *TeleVideo*, 826 F.2d at 917–18.

3 To prevail on their claim, the Trust Funds must show (among other things) that RG
 4 Construction “failed to contribute in accordance with the plan.” *Id.* at *3 (quoting *Bd. of Trustees*
 5 of *Sheet Metal Workers Health Care Plan of N. California v. Gervasio Env’t Sys.*, No. C 03-04858
 6 WHA, 2004 WL 1465719, at *1 (N.D. Cal. May 21, 2004)). RG Construction’s remittance forms
 7 are the only documents in the record that identify the employees covered by the Trust Funds and
 8 confirm the number of hours they worked each month—key facts for Plaintiffs’ claim that
 9 Defendant failed to contribute according to the CBA. *See* Dkt. No. 15 at 2 (“The contribution rate
 10 is set by the CBAs and is generally paid on an employee’s behalf on a cents per hour worked
 11 basis.”). Because these documents conflict with Plaintiffs’ accounting of what Defendant owes
 12 under the CBA, Plaintiffs’ claim is not presently sufficient.

13 In addition, the Trust Funds make little effort to explain their calculations of liquidated
 14 damages. Their motion cites the rate in the trust agreements and states that “the company was
 15 assessed with liquidated damages” without elaboration. Dkt. No. 14 at 8. But once again, neither
 16 Mr. Kepner’s declaration nor the attached summary includes an explanation, only numbers. Dkt.
 17 No. 15 at 4; *id.* at 72–76. The Trust Funds must show their work; the Court will not carry their
 18 burden for them. *See, e.g., Young v. Sundown Elec. Co.*, No. 3:14-CV-00729-HZ, 2014 WL
 19 4639881, at *2 (D. Or. Sept. 16, 2014) (declining to award plaintiffs liquidated damages and
 20 interest where “[p]laintiffs attach[ed] a spreadsheet, but provide[ed] no explanation of how any of
 21 the requested sums were calculated”); *Dynascan Tech., Inc. v. Plasmedia Prods., Inc.*, No.
 22 SACV09-00587-CJC(MLGx), 2010 WL 11523712, at *3 (C.D. Cal. Sept. 23, 2010) (declining to
 23 award contract damages or prejudgment interest where plaintiff “failed to adequately tabulate these
 24

1 amounts or ‘show their work’ as to how final damages should be calculated”). The second and
 2 third *Eitel* factors weigh against default judgment.

3 The fourth *Eitel* factor “considers whether the amount of money requested is proportional
 4 to the harm caused.” *Sun Life Assurance Co. of Canada v. Estate of Wheeler*, No. C19-0364JLR,
 5 2020 WL 433352, at *4 (W.D. Wash. Jan. 28, 2020). Plaintiffs request a total of \$53,792.99 on
 6 default judgment, including large sums for unpaid contributions, liquidated damages, and interest.
 7 Dkt. No. 14 at 9. Though these categories of awards are authorized under Section 502 of ERISA
 8 and the CBA, Plaintiffs request a significant amount. *Donkey Hoof LLC*, 2022 WL 17716443, at
 9 *3. The discrepancies between the amount requested and the documents that provide key
 10 information for the calculation of that amount create doubt as to whether it is proportional to the
 11 harm Defendant caused. *See id.* This factor weighs against default judgment.

12 The seventh *Eitel* factor, favoring deciding cases on their merits whenever reasonably
 13 possible, likewise weighs against default judgment. *Eitel*, 782 F.2d at 1472.

14 2. Factors Favoring Default Judgment

15 The first and sixth factors support default judgment in this case.

16 “[P]rejudice exists where the plaintiff has no recourse for recovery other than default
 17 judgment.” *Curtis v. Illumination Arts, Inc.*, 33 F. Supp. 3d 1200, 1211 (W.D. Wash. 2014)
 18 (citation and internal quotation marks omitted). Defendant has failed to respond to this action, so
 19 default judgment is the Trust Funds’ only means for recovery. *See Eve Nevada, LLC v. Derbyshire*,
 20 No. 21-0251-LK, 2022 WL 279030, at *3 (W.D. Wash. Jan. 31, 2022). Thus, the first *Eitel* factor
 21 supports default judgment.

22 Turning to the sixth *Eitel* factor, the record contains no indication that Defendant’s default
 23 was due to excusable neglect. Defendant has been served and given sufficient notice of this action.
 24

1 Because there is no evidence of excusable neglect, this *Eitel* factor favors the entry of a default
2 judgment. *Id.* at *4.

3 **III. CONCLUSION**

4 On balance, five of the seven *Eitel* factors do not support default judgment and outweigh
5 the two factors that favor it. The Trust Funds' motion for default judgment, Dkt. No. 14, is
6 accordingly DENIED without prejudice. If the Trust Funds wish to file an amended motion, they
7 may do so within 30 days of the date of this Order. Such motion must comply with applicable rules
8 and law, including but not limited to this Court's Updated Standing Order for All Civil Cases, and
9 the Trust Funds may not seek attorney's fees for their work on the amended motion. Dkt. No. 23
10 at 10 (the Court "will not award fees incurred as a result of . . . correcting mistakes").

11 Dated this 31st day of March, 2023.

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14 Lauren King
15 United States District Judge
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